

**Before The  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D. C. 20554**

In the matter of:	)	
	)	
Policies To Promote Rural Radio	)	MB Docket No. 09-52
Service and To Streamline Allotment	)	RM-11528
and Assignment Procedures	)	

To: The Secretary

**REPLY TO OPPOSITION  
OF EDUCATIONAL MEDIA FOUNDATION  
AND BRYAN BROADCASTING CORPORATION**

William B. Clay (“Clay”) responds to the *Opposition to Petition for Reconsideration* (“*Opposition*”) of Educational Media Foundation (“EMF”) and Bryan Broadcasting Corporation (“BBC”) filed on January 5, 2012.<sup>1</sup> The *Opposition* responds to Clay’s May 6, 2011 *Petition for Reconsideration* (“*Petition*”) of the *Second Report and Order* in the captioned proceeding, released March 3, 2011 (26 FCC Rcd 2556; “2<sup>nd</sup> R&O”).

1. The *Opposition* expresses broad objection to the “urbanized area service” presumption that the Commission adopted for radio community changes with the 2<sup>nd</sup> R&O (¶¶ 30, 35, and 38) and complains of three ostensible defects of Clay’s *Petition*. According to the *Opposition*, Clay:

- A. Did not identify any specific harm that the solutions he advocates would remedy (at 1).
- B. Did not “spell out the presumptions and policies” for city of license changes (at 1).
- C. Implied “there is something inherently wrong” with maximizing facility coverage (at 4).

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<sup>1</sup> The present *Reply* addresses arguments that are unique to EMF/BBC’s *Opposition*. Other EMF/BBC arguments are largely duplicative of the “*Comments in Response to Petitions for Reconsideration*” filed on January 5, 2012 by Radio One, *et al.* Clay’s *Reply* to that pleading, filed together with the present *Reply*, responds to those arguments.

2. It is true that Clay's *Petition for Reconsideration* did not repeat the extensive argument, precise policy suggestions, and detailed statistical showings that filled 57 pages of the *Comments* Clay filed on July 13, 2009 in the captioned proceeding. However, the Commission's diagnosis of the problem clearly showed its familiarity with Clay's submission, and the remedy chosen, while disappointing, was also informed by Clay's prescriptions. The *Petition* did refer the reader to these more detailed discussions at footnotes 7 and 9.

3. The Commission's *Notice of Proposed Rule Making* for the subject proceeding expressed concern that many allotment proposals upon which a Section 307(b) preference is conferred are "antithetical to the public interest" (§ 8). In its 2<sup>nd</sup> R&O, after analyzing extensive comments (including those of EMF and Clay), the Commission provided a detailed rationale for increasing the rigor surrounding award of 307(b) allotment preferences (§§ 12-28). Clay substantially agrees with that analysis, and his *Petition for Reconsideration* thus did not repeat it. However, his *Petition* did reference a showing of the harm that the new policy still permits (n. 7).

4. Clay's *Comments* extensively described the harm he seeks to prevent (Summary, §§ 14-17 and 27-29, 33-38, and Exhibit C): removal of broadcast facilities from their long-standing communities of license based upon award of a "first local service" channel allotment preference for which, after more than two decades of broadcast deregulation, there is not even a residue of a rational foundation. The 2<sup>nd</sup> R&O cited some of those data (§ 26 and n. 69).

5. Clay's detailed analysis of the first 203 "streamlined" changes in community of license found that 164 (81%) of them were granted pursuant to a first local service preference. He found that only three of the 164 grants showed a clear incentive for the relocated facility to provide the "local service" that was the sole justification for their removal from their former communities of license. Of the 161 changes having no public interest merit in actual fact, the Commission's new policy would allow 102 (62%). It would be interesting to know what EMF/BBC might regard as

advocacy having a greater precision than a list of 102 consummated community changes that are asserted to be antithetical to the public interest.

6. EMF/BBC's second claim of omission is that Clay does not suggest how "the public interest evaluation [he advocates] be applied in any consistent manner in the public interest" (at 2). Apparently EMF/BBC overlooked his *Petition's* n. 9, which cites two different proposals, the *Comments of Mullaney Engineering* and those of Clay himself. Both are quantitative and unambiguous. While Mullaney's is described only at a level of general objectives, it calls for clear numerical guidelines that would avoid precisely the lack of clarity that EMF laments. As for Clay's *Comments*, its ¶¶ 50 and 55-61 define in extreme detail a policy for evaluation of "first local service" claims (Priority 3 under the Commission's Section 307(b) preferences) that is just as quantitative and unambiguous as the Commission's criteria for first and second aural service (Priorities 1 and 2).

7. EMF/BBC would not be expected to agree with Clay's suggested policy, but their implication that it lacks precision could not be more incorrect. Their alternative ground for criticism, purported inconsistency with "the public interest," suggests that EMF/BBC may be aware that the record is out of line with their caricature of it, so the straw man figure they present is painted with a bit of artful vagueness. If the real issue is the mysterious public interest benefit of Clay's policy proposals, that's been addressed above. In either case, since EMF/BBC disclaim any clear understanding of the metes and bounds of Clay's policy proposal, their criticism of its ostensible flaws is baseless.

8. Finally, EMF/BBC accuse Clay "imp[lying] that there is something wrong with broadcasters looking to improve the coverage of their stations ..." and trot out the well-worn truism that stations are not "limited to service areas restricted to their their communities of license." Citing Class B and C FM stations as examples shows that EMF/BBC completely

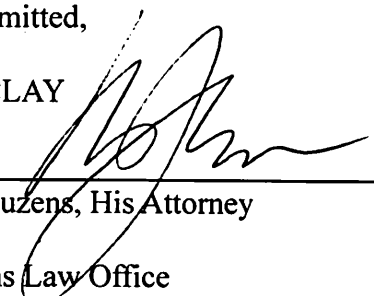
overlooked the proposal of Clay's *Comments* at ¶ 58 for composite communities of license, "intended to permit facilities having no single dominant covered community (e.g., high-powered facilities in sparsely-populated rural areas) to qualify for a local service allotment preference."

9. EMF/BBC (like many of the broadcast industry parties to this proceeding) have become so used to the easy path of a Priority 3 first local service "trump card" for their non-competitive community changes that they seem to have forgotten about Priority 4 – which was obviously conceived to allow flexibility in handling the vast majority of channel allotment challenges. The claim that loss of their Priority 3 trump card blocks community changes which would "improve coverage" is narrowly focused on increased population coverage. The Commission unequivocally dismisses this argument at 2<sup>nd</sup> R&O ¶¶ 21-24.

10. EMF/BBC stand firmly within the long tradition of apologists for less rigorous vetting of channel allotment priority claims. They manage to ignore Clay's arguments and policy proposals and instead present extreme straw-man mischaracterizations that they can more easily contradict. Their *Opposition's* criticisms of Clay's *Petition* has no basis in fact and should be disregarded.

Respectfully submitted,

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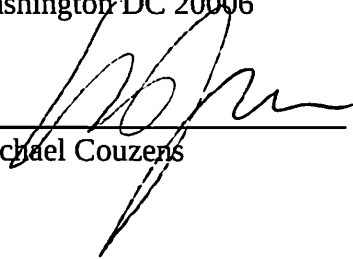
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January 17, 2012

### Certificate of Service

I hereby certify that on this day of January 17, 2012, I caused to be sent by first-class mail, postage pre-paid, a true copy of the foregoing *Reply to Opposition* to:

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